

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DARRELL W. MCCOWAN,

Plaintiff,

V.

GREAT WEST CASUALTY COMPANY,

Defendant.

CIVIL ACTION NO.

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. 1331, 1332, 1441 and 1446, DEFENDANT GREAT WEST CASUALTY COMPANY (“Defendant” or “GWCC”) respectfully removes to this Court the action filed by Plaintiff DARRELL W. MCCOWAN (“Plaintiff” or “McCowan”) and captioned Cause No. DC-19-06818, *Darrell W. McCowan v. Great West Casualty Company*, in the 116th Judicial District Court of Dallas County, Texas (the “State Court Litigation”). In support of removal, Defendant states as follows:

I. INTRODUCTION

1. On May 13, 2019, Plaintiff commenced the State Court Litigation by filing Plaintiff's Original Petition (the "Original Petition") in the 116th Judicial District Court of Dallas County, Texas. In his Original Petition, Plaintiff asserts claims for race and color discrimination, retaliation, and hostile work environment under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, ("Title VII") and Chapter 21 of the Texas Labor Code ("Chapter 21"), along with claims of race and color discrimination and retaliation under 42 U.S.C. § 1981 ("Section 1981").

See Original Petition ¶¶ 42 - 76. Plaintiff seeks monetary relief of over \$200,000.00. Original Petition ¶ 19.

2. GWCC was served with Plaintiff's Original Petition and Summons via its registered agent on May 20, 2019.

3. GWCC timely filed its Original Answer, which includes a General Denial, in state court on June 6, 2019.

II. GROUNDS FOR REMOVAL

1. Removal is proper because the State Court Litigation is one over which the federal district courts have original jurisdiction. *See* 28 U.S.C. ¶ 1441(a). Specifically, this Court has original jurisdiction over this civil action because (i) Plaintiff's claims present a federal question, *see* 28 U.S.C. § 1331, and (ii) there is complete diversity of citizenship among the parties and the amount in controversy exceeds \$75,000, *see* 28 U.S.C. § 1332(a).

B. Federal Question Jurisdiction

1. A federal district court has original jurisdiction under 28 U.S.C. § 1331, over all civil actions arising under the Constitution, laws, or treaties of the United States. In the State Court Litigation, Plaintiff asserts that he was subject to discrimination, retaliation, and a hostile work environment on the basis of his race and color, in violation of Title VII and Section 1981, and seeks damages pursuant to these statutes as a result. *See* Original Petition ¶¶ 57-76. Plaintiff's asserted causes of action under Title VII and Section 1981 are those over which this Court has original jurisdiction under 28 U.S.C. § 1331. As such, this is a matter which may be removed to this Court by Defendant pursuant to 28 U.S.C. § 1441(a).

2. In addition, Plaintiff alleges state law claims under Chapter 21 over which this Court has supplemental jurisdiction. 28 U.S.C. § 1367(a); *see* Original Petition ¶¶ 42-56. Plaintiff's

state law claims under Chapter 21 are so related to Plaintiff's claims under Title VII and Section 1981 – over which this Court has original jurisdiction – that they form part of the same case or controversy under Article III of the United States Constitution. *See* 28 U.S.C. § 1367(a). Further, Plaintiff's claims under Chapter 21 do not present independent, novel or complex state law issues. *See* 28 U.S.C. § 1367(a), (c).

C. Diversity Jurisdiction

1. This Court also has original jurisdiction over this action under 28 U.S.C. § 1332(a), and this matter is one which may be removed to this Court by Defendant pursuant to 28 U.S.C. § 1441. Defendant is incorporated under the laws of – and is headquartered in – Nebraska. *See* EXHIBIT A, Declaration of Craig A. Posson (“Posson Declaration”). Defendant's Nebraska headquarters, located at 1100 West 29th St., South Sioux City, Nebraska 68776, serves as the center of direction, control, and coordination for the Company's operations. *See* EXHIBIT A, Posson Declaration. The majority of Defendant's executive and administrative functions (including, but not limited to, operations, corporate finance, accounting, human resources, payroll management, marketing, legal, and information systems) are performed at its headquarters, and Defendant's corporate officers, including its Chairman, CEO, President and Chief Underwriting Officer, Executive Vice-President and COO, and Sr. Vice-President and Chief Accounting Officer work from its headquarters. *See* EXHIBIT A, Posson Declaration. As such, Defendant's principal place of business is in Nebraska, and consequently, at the time of filing and at the time of removal, GWCC was and continues to be a citizen of Nebraska. 28 U.S.C. § 1332(c). *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93, 130 S.Ct. 1181, 1192-1193, 175 L.Ed.2d 1029 (2010) (term “principal place of business” in federal diversity jurisdiction statute refers to the place where a corporation's officers direct, control and coordinate the corporation's activities); *Tour Strategy LLC v. Star-*

Telegram, Inc., No. 4:18-cv-074-A, 2018 WL 1796555, at *3 (N.D. Tex. April 16, 2018) (applying *Hertz* to conclude that the defendant's principal place of business was in California, despite evidence that almost all of the defendant's employees were in Texas and most of its visible business activities occurred in this state, based on the dispositive fact that the corporation's high level officers directed, controlled and coordinated the defendant's activities from California).

2. Neither Defendant's headquarters nor its principal place of business were ever located in the State of Texas. *See* EXHIBIT A, Posson Declaration. No change of citizenship has occurred since the commencement of the State Court Litigation.

3. Plaintiff is Texas citizen and resident. *See* Original Petition, ¶ 1. Therefore, complete diversity of citizenship exists between Plaintiff and GWCC. *See* 28 U.S.C. §§ 1332(a)(1), (c)(1).

4. Additionally, as reflected in his Original Petition, Plaintiff is seeking monetary damages in excess of \$200,000. *See* Original Petition, ¶ 19. Accordingly, as is evident from the face of Plaintiff's Original Petition, this case exceeds the requisite amount in controversy of \$75,000. 28 U.S.C. § 1332(a).

5. Because there is complete diversity of citizenship between the parties involved in this lawsuit and the amount in controversy exceeds \$75,000, this Court has original jurisdiction over this matter under 28 U.S.C. § 1332(a), and – as such – removal of this case is proper under 28 U.S.C. § 1441(a).

III. REMOVAL IS TIMELY

1. Defendant files this Notice within 30 days of receipt and service of Plaintiff's Original Petition. Accordingly, this Notice is timely filed pursuant to 28 U.S.C. § 1446(b).

IV. NOTICE

1. Upon filing this Notice of Removal, Defendant will provide written notification to Plaintiff and will file a copy of this Notice of Removal with the District Clerk for the 116th Judicial District Court of Dallas County, Texas, in accord with 28 U.S.C. § 1446(d).

V. VENUE IS PROPER

1. By reason of the foregoing, Defendant is entitled to have this cause removed from the 116th Judicial District Court of Dallas County, Texas, to the United States District Court for the Northern District of Texas, Dallas Division, such being the district and division where this suit is currently pending, and conditioned that Defendant will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that this case was not removable or not properly removed. *See* 28 U.S.C. § 1441(a).

VI. INDEX OF MATTERS BEING FILED

1. In accordance with 28 U.S.C. § 1446(a) and/or Local Rule 81.1, attached hereto as EXHIBIT “B” is an index and true and correct copies of all process, pleadings, and orders filed in the State Court Litigation, as well as the docket sheet for the State Court Litigation. Other than the items attached as Exhibit B, no other pleadings or motions have been filed, and no other orders have been signed, in the State Court Litigation.

2. Furthermore, contemporaneous with the filing of this Notice, Defendant is filing separately a signed certificate of interested persons that complies with Local Rule 3.1(c) or 3.2(e). Defendant is also filing contemporaneously herewith its civil coversheet and its supplemental coversheet.

VII. JURY DEMAND

1. Plaintiff demanded a jury in the state court action. *See* Plaintiff's Original Petition, ¶ 81.

VIII. CONCLUSION

WHEREFORE, pursuant to the aforesaid statutes and in conformance with the requirements set forth in 28 U.S.C. § 1446, Defendant removes the case styled *Darrell W. McCowan v. Great West Casualty Company, Cause No. DC-19-06818*, from the District Court of Dallas County, 116th Judicial District, as of the 11th day of June, 2019, and requests that, upon final resolution of the matter, Plaintiff take nothing by way of his claims against Defendant, and that Defendant receive such other and further relief, as law or in equity, to which it may be justly entitled. Defendant further prays that this Court place this action on its docket for further proceedings and that this Court issue all necessary orders.

Dated: June 11, 2019

Respectfully submitted,
MORGAN, LEWIS & BOCKIUS LLP

/s/Robert E. Sheeder

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ATTORNEYS FOR DEFENDANT
GREAT WEST CASUALTY COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of June 2019, I electronically filed ***Defendant's Notice of Removal*** with the Clerk of the Court using the CM/ECF system. Any counsel not registered with the CM/ECF system are being served by certified mail, return receipt requested:

/s/ Robert E. Sheeder

Robert E. Sheeder

EXHIBIT A

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DARRELL W. MCCOWAN,

Plaintiff,

v.

GREAT WEST CASUALTY
COMPANY,

Defendant.

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CIVIL ACTION NO.

INDEX OF STATE COURT DOCUMENTS

1.	05/13/2019	Plaintiff's Original Petition
2.	05/15/2019	Issue Citation
3.	05/20/2019	Executed Citation
4.	06/06/2019	Defendant's General Denial
5.	06/07/2019	Reid Vacation Letter
6.	06/10/2019	Sheeder Vacation Letter
7.		Docket/Case Information Sheet

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To:

**GREAT WEST CASUALTY COMPANY
SERVE ATTORNEY FOR SERVICE
DAVID SARGENT
1717 MAIN ST STE 4750
DALLAS TX 75201-7346**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **116th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **DARRELL W MCCOWAN**

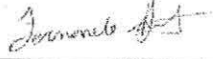
Filed in said Court **13th day of May, 2019** against

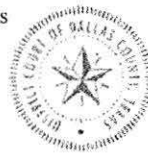
GREAT WEST CASUALTY COMPANY

For Suit, said suit being numbered **DC-19-06818**, the nature of which demand is as follows:
Suit on **EMPLOYMENT** etc. as shown on said petition **REQUEST FOR DISCLOSURE**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 15th day of May, 2019.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By , Deputy
FERNANDO SOTO



ESERVE

CITATION

DC-19-06818

**DARRELL W MCCOWAN
vs.
GREAT WEST CASUALTY COMPANY**

**ISSUED THIS
15th day of May, 2019**

**FELICIA PITRE
Clerk District Courts,
Dallas County, Texas**

By: FERNANDO SOTO, Deputy

**Attorney for Plaintiff
WILLIAM E REID
REID & DENNIS PC
2600 DALLAS PARKWAY
SUITE 380
DALLAS TX 75034-8128
214-618-1400**

wreid@reiddennis.com

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

NO. DC-19-06818

Stephanie Clark

DARRELL W. MCCOWAN	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
VS.	§	___ JUDICIAL DISTRICT
	§	
GREAT WEST CASUALTY COMPANY	§	
<i>Defendant.</i>	§	DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff DARRELL MCCOWAN files Plaintiff's Original Petition against Defendant GREAT WEST CASUALTY COMPANY (Defendant or Great West) and in support thereof would respectfully show the Court as follows:

I.
THE PARTIES

1. **Darrell McCowan** at all times material hereto, was a Texas citizen and resident. Plaintiff was employed by Great West at a facility in Texas, where Great West maintains its principal place of business. Great West does business in Texas. Plaintiff has been subjected to unlawful employment practices committed in the State of Texas.
2. **Great West Casualty Company is an employer within the meaning of Chapter 21 of the Texas Labor Code.** Great West is a Nebraska corporation licensed to sell insurance in the state of Texas. Great West Casualty Company can be served with process by serving its attorney for service, David Sargent, 1717 Main St., Ste 4750, Dallas Texas, 75201-7346.

ISSUANCE OF CITATION IS HEREBY REQUESTED.

II.
SUMMARY OF ACTION

3. This is a suit seeking compensatory, declaratory, injunctive and other relief to secure the rights of Plaintiff under Chapter 21 of the Texas Labor Code. This suit is being brought to prevent Great West from maintaining its policy, practice, custom or usage of discriminating against Plaintiff in regard to compensation, terms, conditions and privileges of employment.
4. Defendant Great West prides itself as being *one of America's largest insurers of trucking companies because of our reputation for unparalleled products and services*. Great West has five offices throughout the United States, one of them located in Texas. Defendant Great West employed at least fifteen or more employees.
5. Darrell McCowan asserts a disparate discipline discrimination claim. Mr. McCowan was treated differently than similarly situated co-workers who engaged in comparable rule or policy violations and received more lenient discipline. Non-black African American co-workers involved in acts against Great Western of comparable seriousness received more favorable treatment.
6. Great West's website Corporate Culture page states: **"Our Golden Rule" is: *"Respect the dignity of each individual and treat all persons impacted by our actions and decisions with fairness and honesty."*** Great West seemingly understood that employees are human and make mistakes unless they are African American.
7. Great West showed compassion and understanding to non-black African American employees who did not follow company policy and engaged in conduct of more or comparable seriousness: i.e. stealing, using the company credit card for personal use, falling asleep at work at their desk, coming to work intoxicated and drinking alcohol during lunch, not answering the phone when designated as the "on-call adjuster" and/or using the

company credit card for placing gambling debts. For company infractions such as these, non-black African American employees received grace and more lenient discipline and were put on corrective action plans and given the opportunity to continue their employment. Mr. McCowan's immediate supervisor understood this and objected to Great West's decision to terminate Mr. McCowan. Great West did not enforce its rules evenhandedly. The stated reasons Great West used for terminating Mr. McCowan were simply pretext.

8. Great West's corporate management did not treat black African-American employees the same as it treated its non-black African American employees. Great West dealt with its non-black African American employees differently, as long as they did not oppose or object to Great West's racial discrimination of African American employees.
9. Plaintiff Darrell McCowan is a Black African American male who had worked at Great West's Texas office for 5 years, when he was suddenly and maliciously terminated and accused of "fraud" during the holiday season in December 2018. Great West's Nebraska corporate management implemented disparate treatment of Mr. McCowan that failed to meet the basic definition of respect and failed to comply with Great West's Texas HR policy and course of dealing.
10. Great West contends that in December 2018, a client contacted Great West regarding the status of an accident claim. Great West's Vice President of Claims, Vance Severson, had Texas Assistant Vice President of Claims, Richard Bapst, the second in command of Great West's Texas office investigate and examine the matter. Mr. Bapst determined that claims adjuster, Darrell McCowan, made a mistake and had incorrectly entered notes into the computer system prematurely showing he had contacted a client, Dillon Transport, on a

date when he hadn't. Mr. Bapst advised Mr. Severson that Mr. McCowan was an exceptional adjuster and that that he would address the matter with corrective action and objected to terminating Mr. McCowan. Assistant Vice President of Claims Bapst explained why Mr. McCowan's conduct did not warrant nor qualify as grounds for termination based on the way Great West had managed its employees and conducted business in Texas. After all, Dillon Transport did not terminate its relationship with Great Western in December of 2018.

11. Mr. Bapst investigated the matter and concluded that Mr. McCowan's intentions had been to contact the client, and that Mr. McCowan had gotten sidetracked on another client's claim and hadn't contacted the client on the date reflected in the company's system. Assistant Vice President of Claims Bapst then counseled Mr. McCowan on his actions and advised Vance Severson that Mr. McCowan should be reprimanded and placed on a corrective action plan.

12. At that point things became very unexplainable to Assistant Vice President of Claims Bapst. Mr. Severson ignored his Assistant Vice President of Claims findings and recommendations and the HR protocol that was in place to manage the Texas office. Instead, Mr. Severson ordered a separate investigation to gather evidence to make Mr. McCowan look bad and hide Mr. Severson's racially motivated decision to terminate Mr. McCowan. Assistant Vice President of Claims Bapst objected and did not support Mr. Severson's decision to terminate Mr. McCowan. Assistant Vice President of Claims Bapst could not explain or find a legitimate business reason to treat Mr. McCowan differently than his non-African American peers and terminate his employment. Great West had not lost Dillon Transport as a client. Assistant Vice President of Claims Bapst disagreed with

that the pre-text decision to terminate Mr. McCowan because it substantially departed from Great West's normal course of dealing. Mr. McCowan, according to Great West's Texas course of dealing and procedure, should have been provided remedial training and placed on a corrective action program. However, the problem at issue was something Assistant Vice President of Claims Bapst could not change, i.e. the color of Mr. McCowan's skin and the fact he was an African American.

13. In an attempt to cover up its racially motivated footsteps after Assistant Vice President of Claims Bapst objected, Great West's management decided to bypass the Texas HR department and send a representative from Nebraska to audit Mr. McCowan's phone records and computer entries to locate evidence to support Mr. Severson's decision to terminate Mr. McCowan. Vance Severson assigned Mark McCarthy, an employee from South Sioux City Nebraska to come to Texas to investigate Mr. McCowan rather than follow the standard protocol of having the Texas Human Resource Manager in Texas investigate and handle the matter. Mr. Severson's problem was that the Texas HR department was not going to support his decision to terminate African American McCowan.

14. Vance Severson circumvented Texas Human Resource Manager in Texas ,Mary Bongard's responsibility to investigate and handle the McCowan matter because he understood that Ms. Bongard would not support his racially motivated decision to terminate Mr. McCowan. Mr. Severson created and authorized a pretext investigation that did not comply with Great West protocol, company policy and disciplinary procedures in order to find or create evidence to support his decision to terminate the African American.

15. Mr. Severson instructed Assistant Vice President of Claims Bapst to terminate Mr. McCowan. Assistant Vice President of Claims Bapst refused to terminate Mr. McCowan because he believed terminating Mr. McCowan was not justified and was morally wrong. Mr. Bapst was so distraught over Mr. Severson's discrimination that he began to experience anxiety and depression. Assistant Vice President of Claims Bapst could not mentally process or discern how to handle a direct order to terminate an employee for racially motivated reasons. Mr. Severson's racial discrimination created a toxic work environment in the Texas office for Assistant Vice President of Claims Bapst. Instead of terminating Mr. McCowan, Mr. Bapst sought medical treatment for his anxiety and depression created by the toxic environment that discriminated against a good man because of the color of his skin. Mr. Bapst exercised his legal right to take medical leave and provided Great West with a medical verification that he was not capable of working during December 18-20, 2018.

16. Mr. Severson was undeterred by Mr. Bapst's objection and refusal to terminate Mr. McCowan. Instead, Mr. Severson instructed someone to send a fraudulent memorandum authored by Assistant Vice President of Claims Bapst advising Mr. McCowan he was terminated. A true and correct copy of the fraudulent memorandum is attached hereto as Exhibit A. Mr. Bapst did not author nor send the December 18, 2018 memorandum to Mr. McCowan. Great West also retaliated against Assistant Vice President of Claims Bapst and terminated Mr. Bapst in retaliation for opposing Great West's racial discrimination of Mr. McCowan. Mr. Bapst is pursuing a wrongful termination and retaliation claim against Great West. Mr. Bapst never stated: "We no longer believe that your values align with Great West." Mr. Bapst did not authorize anyone to use his name to terminate Mr.

McCowan's employment. The fraudulent memorandum advised Mr. McCowan to contact Mark McCarty or Brian Weatherwax. Vance Severson was copied on the fraudulent Memorandum.

17. When Mr. Bapst objected to Great West's discrimination, he was terminated while he was on medical leave. Plaintiff McCowan files this suit to hold Defendant Great West accountable for its improper discriminatory conduct that cannot be tolerated in a civilized community.

III.

JURISDICTION, VENUE AND STATEMENT OF MONETARY RELIEF

18. Jurisdiction is invoked to seek a redress of violations of the Texas Commission on Human Rights Act of 1983 (TCHRA), as amended Tex. Lab. Code Ann. § 21.001, et seq., (Chapter 21 of the Texas Labor Code) which Act's purpose is to secure to those within the state freedom from discrimination in employment.
19. Plaintiff seek relief within the jurisdictional limits of this court. Pursuant to Rule 47 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff seeks monetary relief over \$200,000.00 but not more than \$1,000,000.00.
20. Venue is proper pursuant under §15.002 of the TEXAS CIVIL PRACTICE & REMEDIES CODE.

IV.

DISCOVERY LEVEL

21. Plaintiff intends that discovery be conducted under Level 3 of Rule 109.4 of the TEXAS RULES OF CIVIL PROCEDURE.

V.

CONDITIONS PRECEDENT

22. Pursuant to Tex. R. Civ. P. 54, Plaintiff pleads that all conditions precedent have been performed or have occurred.
23. Plaintiff Darrell McCowan filed a charge of race and national origin discrimination Charge No. 1A19690 with the Texas Workforce Civil Rights Division ("TWC") on February 13, 2019. On May 7, 2019 the Texas Workforce Civil Rights Division similarly issued a Notice of Right to File a Civil Action. Great West's general counsel Craig Posson has received a copy of the right to sue letter.
24. This lawsuit has been timely filed.

VI. **FACTS**

A. Defendant.

25. Defendant Great West markets itself as an honest company and that "*treat[s] everyone honestly and fairly, with dignity and respect*"¹ and that it is "*a family of diverse insurance professionals who respect and mentor each other to ensure our mutual success.*"² However, Great West's marketing and company policy does not apply to black African American employees.
26. Defendant Great West treated a black African American employee, Darrell McCowan disparately different.
27. During the time Plaintiff worked for Defendant Great West, he was managed by the Texas office. However, Defendant Great West had recently transferred control of managing the Texas office to Great West's Nebraska office. The management team of the Nebraska office was predominantly white and did not appreciate the benefit of working with African

¹ <https://www.gwccnet.com/culture>

² *Id*

American employees. The Nebraska office held black African American employees to a different standard than non African American employees working at Great West.

B. Plaintiff

28. Darrell McCowan began working for Defendant Great West as a Sr Liability Adjuster on or around December 16, 2013 in the Texas office.

29. After approximately 2.5 years, Mr. McCowan was promoted within the Texas office to a Sr 2 Liability Adjuster. In his papers for promotion effective June 6, 2016, his superiors wrote "Darrell is a professional who takes pride in how he represents Great West Casualty and our customers." During this time period, Mr. McCowan was under the control of the Texas management.

30. Darrell's supervisor, Richard Bapst, recognized and acknowledged that Darrell was a dedicated hard-working employee of Great West. Darrell's Performance Appraisal Summaries for 2016, 2017 and 2018 continuously revealed accolades regarding Darrell's work performance:

- **Delivered good customer service-consistency is the key;**
- **Darrell keeps our GWCC customers informed at key intervals in the claims process;**
-
- **Darrell is a dedicated employee and proud representative of Great West.**

31. On February 7, 2018, Executive Vice President for the Texas office, Phil Mahoney, wrote a personal comment on Darrell's Performance Appraisal thanking him for his "...*attention to detail, professionalism and claims knowledge...let's make 2018 even better.*" By all accounts Darrell was a great employee who contributed to the success of the company.

32. Prior to December 2018, there was nothing in Darrell's employment performance with Great West that he was anything but a motivated and loyal employee who worked hard at his job as senior claims adjuster for the company.
33. On December 10, 2018, Darrell received a claim in the company's system from client, Dillon Transport. Darrell entered information into the company's system and started to contact the client when he got sidetracked with another Great West client's claim. Darrell spoke with the client on December 11, 2018 at which time the client advised there was discrepancy in the claim status notes of a contact on December 10, 2018, which had not occurred. On December 12, 2018 Darrell emailed his managers, Vance Severson and Richard Bapst, advising he had spoken with the client and again apologized for the December 10, 2018 incident.
34. Great West's Nebraska management team headed by Vice President of Claims, Vance Severson, advised Darrell's supervisor, Richard Bapst, that they wanted to terminate Darrell. Mr. Bapst objected to the termination because he felt the termination was wrong and believed that Mr. McCowan was being terminated because he was a black African American. Defendant Great West's Nebraska management team was white and imposed a different performance standard for African American employees.
35. Great West's company protocol and course of dealing in Texas required Great West, at most, to place Mr. McCowan into a corrective action plan for his actions rather than terminate his employment. Despite the objections of Mr. Bapst and Mary Bongard, Mr. Severson issued an order to terminate Mr. McCowan. In order to find evidence to support his decision, Mr. Severson had the Nebraska office investigate the matter and examine Mr. McCowan's emails and phone records as a pretext to obtain information to support his

decision to terminate Mr. McCowan. Mr. Severson did not have Ms. Bongard conduct the HR investigation.

36. Mr. Bapst, the second highest ranking person in the Texas office along with the Texas HR department didn't agree with the McCowan investigation because Great West didn't examine and audit others that were not black African Americans. Mr. Bapst believed Great West's investigation headed by Mr. Severson was simply a charade to obtain some evidence to support the decision to terminate a black, African American employee.
37. Vance Severson put Mark McMarty, an employee who works out of the South Sioux City, Nebraska office in charge of the McCowan investigation. Regular procedure would have been to have Mary Bongard, the Texas HR department manager, conduct the investigation. However, since Mr. Severson knew Mr. Bapst and Ms. Bongard didn't agree with the termination. Mr. Severson stacked the deck to support his racially motivated termination decision.
38. Following the pre-text investigation, on December 18, 2018 Great West terminated Darrell McCowan. Mr. McCowan was advised he was terminated for fraud.
39. The Texas Great West office has had several incidences of non-black employees violating company procedures and policies with comparable seriousness. Non-black African American employees who were caught using the company credit card for personal use, falling asleep at their desk, coming to work intoxicated and drinking alcohol during lunch, not answering the phone when designated as the "on-call adjuster" and/or using the company credit card to place gambling bets or pay gambling debts were treated differently. For company infractions such as these, Great West put non-black African American employees on a corrective action plan. However, a black African American employee,

Darrell McCowan, who admittedly made a mistake had to be terminated. Mr. McCowan was treated less favorably than similarly situated members of a non-protected class whose misconduct was far more severe than Mr. McCowan's conduct.

40. Great West's termination of Darrell McCowan because he is a black African American illustrates Great West's discriminatory illegal behavior.

41. Great West discriminated against Darrell McCowan on account of his race and the color of his skin in violation of Chapter 21 of the Texas Labor Code by discriminating against him in the terms, conditions and privileges of his employment. Great West's actions were conducted with malice or reckless indifference to Plaintiff's state protected rights making exemplary damages appropriate. Thereafter, Mr. Severson terminated Richard Bapst for opposing his discriminatory practice. Mr. Bapst has also asserted a retaliation claim arising from Mr. Severson and Great West's retaliating against him for engaging in the protected activity of opposing a racial discriminatory action.

VII.

CAUSES OF ACTION

COUNT I

RACE DISCRIMINATION AND RACIALLY HOSTILE WORK ENVIRONMENT IN VIOLATION OF THE TEXAS LABOR CODE

42. Plaintiff incorporates by reference all facts as set forth in the preceding paragraphs.

43. Defendant violated Plaintiff's civil rights in violation of Chapter 21 of the Texas Labor Code by unlawfully discriminating against Plaintiff with respect to his race (African American) his color (black) because of or on the basis of Plaintiff's race and color. *See Tex. Lab. Code §21.051.*

44. Under the TCHRA, an employer commits an unlawful employment practice if, because of

an employee's race, the employer "discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment." TEX. LABOR CODE ANN. § 21.051(1) (Vernon 2006). The Texas Legislature patterned the TCHRA after federal law "for the express purpose of carrying out the policies of Title VII of the Civil Rights Act of 1964 and its subsequent amendments." *Elgaghil v. Tarrant Cnty. Junior Coll.*, 45 S.W.3d 133, 139 (Tex. App.—Fort Worth 2000, pet. denied); *see also Quantum Chem. Corp. v. Toennies*, 47 S.W.3d 473, 474 (Tex. 2001) (stating same).

45. Mr. McCowan as a black African American was a member of a protected class; was qualified for the position; suffered an adverse employment action when he was fired and was treated less favorably than other similarly situated employees outside the protected group. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 1824, 36 L. Ed. 2d 668 (1973); *McCoy v. Tex. Instruments, Inc.*, 183 S.W.3d 548, 554 (Tex. App.—Dallas 2006, no pet.).

46. Great West's termination reason was a mere pretext for unlawful discrimination.

47. Defendant's violation consisted of discrimination of a continuous nature and led to the loss and impairment in whole or part, of the wages, benefits, promotions, privileges, and terms and conditions of Plaintiff's employment with Defendant.

48. Defendant is vicariously liable for the acts of its managers and supervisors. Further, Plaintiff can show Great West's management is responsible for the discrimination and harassment because managers were the ones making the discriminatory and racist actions and decisions. Such employment practices were not job related and were not consistent with business necessity.

49. Defendant lacked effective policies, procedures, and/or training to prevent race-based discrimination and harassment in the workplace.
50. Defendant's actions created a hostile work environment and subjected Plaintiff to discrimination and harassment.
51. Defendant is liable to Plaintiff for race discrimination in violation of the Texas Labor Code. Plaintiff is a member of a racial minority. Defendant intended to discriminate against Plaintiff on the basis of his race, and color, African-American and Black.
52. Plaintiff was qualified for his position. Plaintiff received promotions and accolades for his employment performance when he worked under the direction and control of the Texas office. Plaintiff was treated disparately than Hispanic and white employees without a legitimate reason. Plaintiff suffered monetary damages in the past and future as a result of Defendants' discrimination.
53. Plaintiff's race was a motivating factor in Defendant's disparate treatment of Plaintiff and in its unlawful termination of employment. Defendant's discrimination proximately caused Plaintiff's damages.
54. All discrimination and retaliation taken by Defendant was undertaken in bad faith, with malice, and intent to harm, or requisite knowledge of the potential for harm to Plaintiff.
55. Plaintiff suffered damages as a result of the unlawful discrimination, including financial losses in the past and future, pain and suffering and extreme and severe mental anguish as well as past and future emotional damages, and all other damages as permitted at law.
56. The above-described acts on Defendant's part were intentional, committed with malice and/or in disregard to Plaintiff's civil rights in violation of the Texas Labor Code, which proximately caused Plaintiff substantial injuries and damages.

COUNT II

**RACE DISCRIMINATION AND RACIALLY HOSTILE
WORK ENVIRONMENT IN VIOLATION OF TITLE VII**

57. Plaintiff incorporates by reference all facts as set forth in the preceding paragraphs. This action arises under Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e et. seq. as amended, and jurisdiction is proper under said Act.

58. Defendant violated Plaintiff's civil rights in violation of Title VII by unlawfully discriminating against Plaintiff with respect to his race (African American) and his color (black) because of or on the basis of Plaintiff's race and color. Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e et. seq.

59. Mr. McCowan as a black African American was a member of a protected class. Mr. McCowan was qualified for the position at issue. Mr. McCowan suffered an adverse employment action when he was fired by Defendant Great West. Mr. McCowan was treated less favorably than other similarly situated employees outside the protected group. Great West's termination reason was a mere pretext for the real discriminatory purpose.

60. Defendant's violation consisted of discrimination of a continuous nature and led to the loss and impairment in whole or part, of the wages, benefits, promotions, privileges, and terms and conditions of Plaintiff's employment with Defendant.

61. Defendant is vicariously liable for the acts of its managers and supervisors. Further, Plaintiff can show Great West's management is responsible for the discrimination and harassment because managers were the ones making the discriminatory and racist actions and decisions. Such employment practices were not job related and were not consistent with business necessity.

62. Defendant lacked effective policies, procedures, and/or training to prevent race-based

discrimination and harassment in the workplace.

63. Defendant's actions created a hostile work environment and subjected Plaintiff to discrimination and harassment.

64. Defendant is liable to Plaintiff for race discrimination in violation of the Texas Labor Code. Plaintiff is a member of a racial minority. Defendant intended to discriminate against Plaintiff on the basis of his race, and color, African-American and Black.

65. Plaintiff was qualified for his position. Plaintiff received promotions and accolades for his employment performance when he worked under the direction and control of the Texas office. However, Great West's Nebraska management treated Plaintiff differently than Hispanic and white employees without a legitimate reason. Plaintiff suffered monetary damages in the past and future as a result of Defendants' discrimination.

66. Plaintiff's race was a motivating factor in Defendant's different treatment of Plaintiff and in its unlawful termination of Mr. McCowan's employment. Defendant's discrimination proximately caused Plaintiff's damages.

67. All discrimination and retaliation taken by Defendant was undertaken in bad faith, with malice, and intent to harm, or requisite knowledge of the potential for harm to Plaintiff.

68. Plaintiff suffered damages as a result of the unlawful discrimination, including financial losses in the past and future, pain and suffering and extreme and severe mental anguish as well as past and future emotional damages, and all other damages as permitted at law.

69. The above-described acts on Defendant's part were intentional, committed with malice and/or in disregard to Plaintiff's civil rights in violation of the Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e et. seq., which proximately caused Plaintiff substantial injuries and damages.

COUNT III

RACE DISCRIMINATION UNDER 42 U.S.C. § 1981

70. Plaintiff re-alleges and incorporates by reference all allegations as set forth in the preceding paragraphs.
71. This is a proceeding for damages, a declaratory judgment, injunctive and other relief to secure the rights of plaintiff under 42 U.S.C. § 1981 and 1981a. It is brought to prevent defendant from maintaining a policy, practice, custom or usage, of discriminating and retaliating against plaintiff in regard to terms, conditions and privileges of employment and to compensate plaintiff for his mental anguish, emotional distress and financial losses occasioned by defendant's discriminatory and retaliatory actions.
72. The right of Plaintiff Darrell McCowan to be free from employment discrimination on the basis of his race is protected by U.S.C. § 1981, and this cause of action is brought within the time permitted by that statute.
73. Plaintiff, a black African-American, was qualified for his position. Plaintiff was treated differently from employees that did not have black skin and were not African American without legitimate reason. Plaintiff's race was a motivating factor in Defendant's different treatment of Plaintiff and in its unlawful termination of employment. Defendant's race discrimination proximately caused Plaintiff's damages.
74. Additionally, Plaintiff, as an African American, engaged in protected activity by filing charges of race discrimination with the Equal Employment Opportunity Commission, the Texas Workforce Commission and by filing this complaint.
75. As a result of defendants' unlawful conduct plaintiff has suffered loss of employment, loss of income, loss of reputation, loss of enjoyment of life, and severe emotional distress, for which he seeks backpay, front pay or reinstatement and compensatory damages.

76. Defendant's actions complained of herein were taken with malice or with a conscious disregard for plaintiffs federally protected rights, making an award of exemplary damages appropriate.

VIII.
CONTINUING TORT

77. Defendant's actions and omissions constitute a continuing tort.

78. As a result, the statutes of limitations for the foregoing tort causes of action have not begun to run, have not runs, and/or have been tolled.

79. Within the appropriate time of the acts of which he complains, plaintiff filed a charge of discrimination, under oath, with the Equal Employment Opportunity Commission and the Texas Commission on Human Rights. Plaintiff received his notice of right-to-file-civil-action with respect to his charge of discrimination, and Plaintiff timely filed suit.

80. Plaintiff has no plain or adequate remedy at law to correct all the wrongs complained of herein, and files this suit for declaratory and injunctive relief as his only means of securing relief. Further, plaintiff is now suffering and will continue to suffer irreparable injury from Great West's policies, practices, customs, and usages set forth herein.

IX.
JURY DEMAND

81. Plaintiff hereby makes a request for a jury trial in this cause pursuant to Rule 216 of the Texas Rules of Civil Procedure.

X.
REQUEST FOR DISCLOSURE

82. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of service of this request, the information or material described in Rule 194.2.

XI.
DAMAGES AND PRAYER

FOR THESE REASONS, Plaintiff Darrell McCowan respectfully prays that Defendant Great West be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for Plaintiff against Defendant as follows:

- a. Grant Plaintiff a permanent injunction, enjoining Great West, its agents, employees, successors, assigns and all persons in active concert or participation with it, from discriminating against him in violation of Chapter 21 of the Texas Labor Code;
- b. Find defendant's practices complained of herein, *i.e.*, his unlawful treatment and firing, to be in violation of Chapter 21 of the Texas Labor Code;
- c. Grant Plaintiff a declaratory judgment, declaring defendant's practices complained of herein to be in violation of the Chapter 21 of the Texas Labor Code;
- d. Grant Plaintiff reinstatement, promotion, back pay, and/or front pay, damages, or any other appropriate relief to compensate him for the wrongs complained of herein;
- e. Grant Plaintiff actual damages for the period of time provided by law, including appropriate including appropriate backpay, commissions, bonuses and any other compensation, and reimbursement for lost insurance, and all other fringe benefits from the date of wrongful termination to the date of the trial of this cause;
- f. Compensatory damages in the maximum amount allowable by law;
- g. Special or consequential damages in the maximum amount allowable by law;
- h. Exemplary and punitive damages in the maximum amount allowable by law;
- i. Pecuniary damages in the maximum amount allowable by law;
- j. Costs of bringing this action, including, without limitation, costs of court, expert witness fees incurred by Plaintiff in the preparation and prosecution of this action and expenses;
- k. Reasonable and necessary attorney fees;
- l. Pre-judgment and post-judgment interest at the maximum rate allowable by law; and
- m. All such other and further relief to which Plaintiff may be justly entitled by equity or statute.

Respectfully submitted,

/s/ William E. Reid

WILLIAM E. REID
State Bar No. 16748500
wreid@reiddennis.com
efilenotifications@reiddennis.com

OFFICER'S RETURN

Case No. : DC-19-06818

Court No. 116th District Court

Style: DARRELL W MCCOWAN

vs.

GREAT WEST CASUALTY COMPANY

Came to hand on the _____ day of _____, 20_____, at _____ o'clock _____ M. Executed at _____,
within the County of _____ at _____ o'clock _____ M. on the _____ day of _____,
20_____, by delivering to the within named _____

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by
me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.

For serving Citation	\$ _____	_____
For mileage	\$ _____	of _____ County, _____
For Notary	\$ _____	By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____, 20_____,
to certify which witness my hand and seal of office.

Notary Public _____ County _____

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To:

**GREAT WEST CASUALTY COMPANY
SERVE ATTORNEY FOR SERVICE
DAVID SARGENT
1717 MAIN ST STE 4750
DALLAS TX 75201-7346**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **116th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **DARRELL W MCCOWAN**

Filed in said Court **13th day of May, 2019** against

GREAT WEST CASUALTY COMPANY

For Suit, said suit being numbered **DC-19-06818**, the nature of which demand is as follows:
Suit on **EMPLOYMENT** etc. as shown on said petition **REQUEST FOR DISCLOSURE**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 15th day of May, 2019.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By , Deputy
FERNANDO SOTO



ESERVE

CITATION

DC-19-06818

**DARRELL W MCCOWAN
vs.
GREAT WEST CASUALTY COMPANY**

**ISSUED THIS
15th day of May, 2019**

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By: FERNANDO SOTO, Deputy

**Attorney for Plaintiff
WILLIAM E REID
REID & DENNIS PC
2600 DALLAS PARKWAY
SUITE 380
DALLAS TX 75034-8128
214-618-1400**

wreid@reiddennis.com

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

OFFICER'S RETURN

Case No. : DC-19-06818

Court No.116th District Court

Style: DARRELL W MCCOWAN

vs.

GREAT WEST CASUALTY COMPANY

Came to hand on the _____ day of _____, 20_____, at _____ o'clock _____ .M. Executed at _____,
within the County of _____ at _____ o'clock _____ .M. on the _____ day of _____,
20_____, by delivering to the within named

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by
me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.

For serving Citation	\$ _____	_____
For mileage	\$ _____	of _____ County, _____
For Notary	\$ _____	By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____, 20_____,
to certify which witness my hand and seal of office.

Notary Public _____ County _____

Daniel Macias

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To:

**GREAT WEST CASUALTY COMPANY
SERVE ATTORNEY FOR SERVICE
DAVID SARGENT
1717 MAIN ST STE 4750
DALLAS TX 75201-7346**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **116th District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **DARRELL W MCCOWAN**

Filed in said Court **13th day of May, 2019** against

GREAT WEST CASUALTY COMPANY

For Suit, said suit being numbered **DC-19-06818**, the nature of which demand is as follows:
Suit on **EMPLOYMENT** etc. as shown on said petition **REQUEST FOR DISCLOSURE**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 15th day of May, 2019.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By , Deputy
FERNANDO SOTO



ESERVE

CITATION

DC-19-06818

**DARRELL W MCCOWAN
vs.
GREAT WEST CASUALTY COMPANY**

**ISSUED THIS
15th day of May, 2019**

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By: FERNANDO SOTO, Deputy

Attorney for Plaintiff
WILLIAM E REID
REID & DENNIS PC
2600 DALLAS PARKWAY
SUITE 380
DALLAS TX 75034-8128
214-618-1400

wreid@reiddennis.com

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

CAUSE NO. DC-19-06818

DARRELL W. MCCOWAN	§	IN THE COURT OF
	§	
Plaintiff,	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
GREAT WEST CASUALTY COMPANY	§	
Defendant.	§	116TH DISTRICT COURT

AFFIDAVIT OF SERVICE

On this day personally appeared **David Whitehead** who, being by me duly sworn, deposed and said:

"The following came to hand on **May 19, 2019, 4:00 am**,

CITATION; PLAINTIFFS ORIGINAL PETITION,

and was executed at **1717 Main St SUITE 4750, Dallas, TX 75201** within the county of **DALLAS** at **04:43 PM** on **Mon, May 20 2019**, by delivering a true copy to the within named

GREAT WEST CASUALTY COMPANY B/S ATTORNEY FOR SERVICE DAVID SARGENT

in person, having first endorsed the date of delivery on same.

I am a person over eighteen (18) years of age and I am competent to make this affidavit. I am a resident of the State of Texas. I am familiar with the Texas Rules of Civil Procedure as they apply to service of Process. I am not a party to this suit nor related or affiliated with any herein, and have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I have personal knowledge of the facts stated herein and they are true and correct."

My name is **David Whitehead**, my date of birth is **10NOV1966**, and my address is **2293 Hawes Ave Suite 2177, Dallas, TX 75235**, and **United States of America**. I declare under penalty of perjury that the foregoing is true and correct.

Executed in **Dallas County, State of TX**, on **May 20, 2019**.



David Whitehead
Certification Number: PCS12227 EXP: 31AUG2019
Certification Expiration:

NO. DC-19-06818

DARRELL W. MCCOWAN,

Plaintiff

v.

GREAT WEST CASUALTY COMPANY,

Defendant.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

116th JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

DEFENDANT GREAT WEST CASUALTY COMPANY’S GENERAL DENIAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant Great West Casualty Company (“GWCC”) and files this its General Denial to Plaintiff Darrell W. McCowan’s (“Plaintiff”) Original Petition and respectfully states as follows:

I.

GENERAL DENIAL

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, GWCC generally denies each and every, all and singular, in whole or in part, the allegations contained in Plaintiff’s Original Petition and demands strict proof thereof as required by law.

II.

SPECIFIC DEFENSES

Without assuming any burden of proof not required by law, GWCC asserts the following defenses:

1. Plaintiff’s claims for damages are subject to applicable Constitutional and statutory caps and/or limitations.

2. All actions taken by Defendant with regard to Plaintiff were taken in good faith, Defendant made good faith efforts to comply with applicable law, and there were reasonable grounds for Defendant to believe its acts or omissions were in conformity with applicable law.

3. Without admitting any of the allegations contained in Plaintiff's Original Petition, Defendant avers that, even if Plaintiff's race and/or color were considered in any of Defendant's acts or decisions, Defendant would have made the same decisions and/or taken the same actions regardless of the impermissible factor(s).

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant Great West Casualty Company prays that the actions against Defendant be dismissed, with prejudice; that judgment be entered in favor of Defendant; that Plaintiff takes nothing by the above-captioned action; and that GWCC be awarded such other and further relief, at law or in equity, to which it may show itself to be justly entitled in law or in equity.

Dated: JUNE 6, 2019

MORGAN, LEWIS & BOCKIUS LLP

By: /s/Robert E. Sheeder

Robert E. Sheeder
Attorney-In-Charge
Bar No. 18174300
robert.sheeder@morganlewis.com

Lauren A. West
Bar No. 24070831
lauren.west@morganlewis.com

1717 Main Street, Suite 3200
Dallas, TX 75201-7347
Telephone: 214.466.4000
Facsimile: 214.466.4001

ATTORNEYS FOR DEFENDANT
GREAT WEST CASUALTY COMPANY

CERTIFICATE OF SERVICE

This is to certify that on the 6th day of June 2019, the foregoing document was served on counsel of record via eFile Texas.

William E. Reid
REID & DENNIS PC
2600 Dallas Parkway
Suite 380
Dallas, Texas 75034-8128

/s/Robert E. Sheeder
Robert E. Sheeder

Martin Reyes

REID & DENNIS

ATTORNEYS AND COUNSELORS AT LAW

TELEPHONE (972) 991-2626 ♦ (214) 618-1400
FACSIMILE (972) 991-2678 ♦ (214) 618-1653

FRISCO OFFICE

2600 Dallas Parkway | Suite 380
Frisco, Texas 75034-8128

WILLIAM E. REID, Esquire

wreid@reiddennis.com

DALLAS OFFICE

3131 McKinney Avenue | Suite 600
Dallas, Texas 75204-2456

Direct Dial (214) 618-0699

www.reiddennis.com

June 7, 2019

Via E-File

116th Judicial District Court Clerk
600 Commerce Street
Dallas Texas 75202

Re: *Cause No. DC-19-06818; Darrell McCowan vs. Great West Casualty Company; In the 116th Judicial District Court of Dallas County, Texas*

Dear Clerk:

Please accept this as my Vacation Letter to advise the Court and all counsel of record that I will be on vacation from July 22 -26, 2019. It is requested that all counsel refrain from scheduling any trials, hearings or depositions during this time. I further request the Court not schedule any hearings/events which may require my attendance.

Respectfully submitted,

/s/ William E. Reid

William E. Reid

/WER

cc:

Via eServe:

All counsel of record

Veronica Vaughn

Robert E. Sheeder

Partner
+1.214.466.4110
robert.sheeder@morganlewis.com

June 10, 2019

116th District Court Coordinator
600 Commerce Street
Dallas, Texas 75202

Via E-File

Re: Cause No. DC-19-06818; *Darrell McCowan vs. Great West Casualty Company*; In the
116th Judicial District Court of Dallas County, Texas

Dear Sir or Madam:

Please accept this as my vacation letter. I have pre-purchased tickets and reservations and will be on vacation starting July 15, 2019 through July 21, 2019. I would greatly appreciate it if the Court would accommodate my request that no hearings or trial setting be scheduled during this time period in the above-cited case.

Thank you for your attention to this matter. Do not hesitate to contact me if you need anything further.

Very truly yours,

/s/Robert E. Sheeder

Case Information

DC-19-06818 | DARRELL W MCCOWAN vs. GREAT WEST CASUALTY COMPANY

Case Number

DC-19-06818

File Date

05/13/2019

Court

116th District Court

Case Type

EMPLOYMENT

Judicial Officer

PARKER, TONYA

Case Status

OPEN

Party

PLAINTIFF

MCCOWAN, DARRELL W

Active Attorneys ▼

Lead Attorney

REID, WILLIAM E

Retained

DEFENDANT

GREAT WEST CASUALTY COMPANY

Address

SERVE ATTORNEY FOR SERVICE

DAVID SARGENT

1717 MAIN ST STE 4750

DALLAS TX 75201-7346

Active Attorneys ▼

Lead Attorney

SHEEDER, ROBERT ELWOOD

Retained

Attorney

WEST, LAUREN A.

Retained

Events and Hearings

05/13/2019 NEW CASE FILED (OCA) - CIVIL
05/13/2019 ORIGINAL PETITION ▼ Original Petition
05/13/2019 ISSUE CITATION ▼ ISSUE CITATION
05/15/2019 CITATION ▼ Anticipated Server ESERVE Anticipated Method Actual Server PRIVATE PROCESS SERVER Returned 05/20/2019 Comment ESERVE
05/20/2019 RETURN OF SERVICE ▼ EXECUTED CITATION - GREAT WEST CASUALTY COMPANY Comment EXECUTED CITATION - GREAT WEST CASUALTY COMPANY
06/06/2019 ORIGINAL ANSWER - GENERAL DENIAL ▼ Defendant's General Denial.pdf
06/07/2019 VACATION LETTER
06/10/2019 VACATION LETTER

Financial

MCCOWAN, DARRELL W

Total Financial Assessment	\$300.00
Total Payments and Credits	\$300.00

5/14/2019	Transaction Assessment	\$300.00
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5/14/2019	CREDIT CARD - TEXFILE (DC)	Receipt # 32133-2019- DCLK	MCCOWAN, DARRELL	(\$300.00)
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Documents

Original Petition

ISSUE CITATION

EXECUTED CITATION - GREAT WEST CASUALTY COMPANY

Defendant's General Denial.pdf

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DARRELL W. MCCOWAN

(b) County of Residence of First Listed Plaintiff Tarrant
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Reid & Dennis PC
2600 Dallas Pkwy., Ste. 380
Dallas, TX 75248 (214) 618-1400

DEFENDANTS

GREAT WEST CASUALTY COMPANY

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Morgan Lewis & Bockius LLP
1717 Main St., Ste. 3200
Dallas, TX 75201 (214) 466-4000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332, 42 U.S.C. 2000e, et. seq., 42 U.S.C. 1981

Brief description of cause:

Diversity, Race discrimination

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE N/A

DOCKET NUMBER N/A

DATE

06/07/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/Robert E. Sheeder

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is related to this filing if the case: 1) involves some or all of the same parties and is based on the same or similar claim; 2) involves the same property, transaction, or event; 3) involves substantially similar issues of law and fact; and/or 4) involves the same estate in a bankruptcy appeal.

Date and Attorney Signature. Date and sign the civil cover sheet.

**Supplemental Civil Cover Sheet for Cases Removed
From State Court**

**This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District
Clerk's Office. Additional sheets may be used as necessary.**

1. State Court Information:

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

<u>Court</u>	<u>Case Number</u>
116th Judicial District Court of Dallas County, Texas	DC-19-06818

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code).

<u>Party and Party Type</u>	<u>Attorney(s)</u>
Darrell W. McCowan - Plaintiff	William E. Reid, State Bar No. 16748500, Reid & Dennis 2600 Dallas Pwky., #380, Dallas, TX 75034, 214.618.1400
Great West Casualty Company - Defendant	Robert E. Sheeder, State Bar No. 16748500, Morgan Lewis & Bockius, 1717 Main St., Ste. 3200, Dallas, TX 75201, 214.466.4000

3. Jury Demand:

Was a Jury Demand made in State Court? ☒ Yes ☐ No

If "Yes," by which party and on what date?

Plaintiff _____
Party

5/13/2019 _____
Date

4. Answer:

Was an Answer made in State Court? ☒ Yes ☐ No

If "Yes," by which party and on what date?

Defendant
Party

6/4/2019
Date

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

<u>Party</u>	<u>Reason(s) for No Service</u>

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate any changes from the style on the State Court papers and the reason for that change:

<u>Party</u>	<u>Reason</u>

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Claim(s)</u>
Plaintiff	Plaintiff alleges race discrimination and hostile work environment under TX Labor Code, Title VII, and 1981.
Defendant	Defendant denies each and every allegation.